

Part III - Administrative, Procedural, and Miscellaneous

Information Reporting Requirements Relating to Transfers of Securities

Notice 2010-67

PURPOSE

This notice provides transitional relief from the information reporting requirements in section 6045A of the Internal Revenue Code (“Code”) that apply beginning in 2011 to transfers of securities by brokers and other custodians. The notice provides that, solely for transfers of stock in 2011 described in the notice, the Internal Revenue Service will not assert penalties for failure to furnish a transfer statement under section 6045A and that the transferred stock may be treated as a noncovered security upon its subsequent sale or transfer.

BACKGROUND

Section 403 of the Energy Improvement and Extension Act of 2008, Div. B of Pub. L. No. 110-343, 122 Stat. 3765, enacted on October 3, 2008, added sections 6045(g), 6045A, and 6045B to the Code. Section 6045(g) provides that, in the case of a covered security, every broker required to report the gross proceeds from the sale of the

security under section 6045(a) must also report the customer's adjusted basis in the security and whether any gain or loss with respect to the security is long-term or short-term. The reporting is generally done on Form 1099-B, "Proceeds from Broker and Barter Exchange Transactions." A covered security includes all stock acquired beginning in 2011 except stock in a regulated investment company for which the average basis method is available and stock acquired in connection with a dividend reinvestment plan, both of which are covered securities if acquired beginning in 2012. A noncovered security is any security that is not a covered security.

To enable brokers to meet the requirements of section 6045(g) for securities transferred between accounts, section 6045A provides that, beginning in 2011, a broker and any other person specified in Treasury Regulations that transfers custody of a covered security to a receiving broker must furnish to the receiving broker a written statement that allows the receiving broker to satisfy the basis reporting requirements of section 6045(g). Except as provided by the Secretary, the statement must be furnished to the receiving broker within fifteen days after the date of the transfer. A covered security remains a covered security if transferred, but only if the receiving broker receives a transfer statement for the transfer.

To enable brokers to meet the requirements of section 6045(g) after an issuer of stock takes an organizational action such as a stock split, merger, or acquisition that affects basis, section 6045B provides that, beginning in 2011, an issuer must report to the Service and to each stockholder or nominee a description of any such action and

the quantitative effect of that action on basis. This requirement does not apply until 2012 to regulated investment companies.

On December 17, 2009, the Treasury Department and the Service published a notice of proposed rulemaking and notice of public hearing (REG-101896-09), 2010-5 I.R.B. 347 (74 FR 67010), on the information reporting requirements under sections 6045(g), 6045A, and 6045B. Many commenters on the proposed regulations stated that brokers and other custodians may have insufficient time to make programming changes necessary to comply in 2011 with final regulations. Commenters requested relief in 2011 from the transfer statement requirement under section 6045A in order to allow industry to focus initially on building the core systems for reporting the sale of covered securities under section 6045(g) beginning in 2011. However, commenters stated that existing systems could accommodate reporting for any transfer of stock that is incidental to the stock's purchase or sale using a cash-on-delivery account or multiple broker arrangement. See Treas. Reg. §1.6045-1(c)(3)(iii)-(iv).

TRANSITIONAL RELIEF FOR CERTAIN 2011 TRANSFERS

Section 6722 imposes a penalty on any transferor that fails to timely furnish a correct transfer statement under section 6045A to the receiving broker. In order to promote industry readiness to comply with the reporting requirements for the sale of covered securities under section 6045(g) beginning in 2011, the Service will not assert penalties under section 6722 for a failure to furnish a transfer statement under section 6045A for any transfer of stock in 2011 that is not incidental to the stock's purchase or

sale as described in Treas. Reg. §1.6045A-1(a)(1)(ii). Further, a receiving broker may treat this stock as a noncovered security.

DRAFTING INFORMATION

The principal author of this notice is Stephen Schaeffer of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice, please contact Stephen Schaeffer at (202) 622-4910 (not a toll-free call).